

**McKittrick, Beverly**

---

**To:** Hunter\_Bates@rules.senate.gov; mbehrens@cromor.com;  
Nathan\_oman@mcconnell.senate.gov  
**Cc:** sjoyce@atra.org; Billy\_Piper@mcconnell.senate.gov  
**Subject:** RE: CJS and Section 109

Very preliminary thoughts:

1) DOJ's spending on the lawsuit during this fiscal year (FY 2000) was frozen at FY99 levels (\$1.8 million). DOJ was always free to request a reprogramming and explain why this lawsuit was important enough to spend money on it as opposed to something else. Using Sec. 109 enabled DOJ to avoid any explanation of why the tobacco lawsuit is a priority.

What is unprecedented is that DOJ requested a special appropriation of \$20 million for a particular lawsuit. To my knowledge, DOJ has never sought a line-item for a particular lawsuit. Why didn't DOJ use funds in their tort budget? My guess is that they didn't want to explain why this lawsuit was more significant than, for example, defending the government in torts suits (which would have come from the same budget category).

If we are successful in this effort, the result will be that DOJ has to adhere to spending \$1.8 million or request a reprogramming. It will not mean they have to drop the lawsuit--it will mean that they can't hire a bunch of outside lawyers, get new office space, build a new computer system, etc. If we are successful, it will also mean that DOJ has to justify why this lawsuit is a priority over other things.

2) Someone on full Committee staff (my guess is Cortese) has a list of every case in which Sec. 109 has been used. If I can get a copy of that list, I will have the cases researched. My understanding is that the section was written to address a situation where DOJ had to defend the actions of another agency, or where another agency actually requested that the case be brought--REQUESTED, not just agreed, that the case be brought.